

FINAL BILL REPORT

ESB 5236

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Synopsis as Enacted

Brief Description: Creating the uniform correction or clarification of defamation act.

Sponsors: Senators Kline and Padden.

Senate Committee on Law & Justice
House Committee on Judiciary

Background: Defamation is defined as an intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill, or confidence in which a plaintiff is held; or to excite adverse derogatory or unpleasant feelings or opinions against a person.

Defamation consists of three primary parts: (1) a defamatory statement; (2) published to a third party; and (3) which the speaker or publisher knew or should have known was false. Some statements are so defamatory that they are considered defamation per se, and the plaintiff does not have to prove that the statement harmed their reputation. Classic examples of defamation per se are allegations of serious sexual misconduct, serious criminal misbehavior, or that a person is inflicted with some loathsome disease. When a plaintiff is able to prove defamation per se, damages are presumed, but the presumption is rebuttable.

Summary: A person may maintain an action for defamation when the person made a timely and adequate request for correction or clarification from the defendant, or the defendant made a correction or clarification.

A request for correction or clarification is adequate when it:

- is made in writing and reasonably identifies the person making the request;
- specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
- alleges the defamatory meaning of the statement;
- specifies the circumstances giving rise to any defamatory meaning of the statement, which arises from other-than express language of the publication;
- states that the alleged defamatory meaning of the statement is false.

A correction or clarification is timely if published within 30 days after receipt of a request for correction or clarification, whichever is later.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If a timely and sufficient correction or clarification is made, a person may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law.

A correction or clarification is sufficient when it:

1. is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;
2. refers to the statement being corrected or clarified and:
 - a. corrects the statement;
 - b. in the case of defamatory meaning arising from other-than express language, disclaims an intent to communicate that meaning or to assert its truth; or
 - c. in the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement;
3. is communicated to the person who made a request for correction or clarification; and
4. accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory statement by the publisher.

If a defendant intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so must be served on the plaintiff within 60 days after service of a summons and complaint, or ten days after the correction or clarification is made, whichever is later.

If a timely correction or clarification is no longer possible, the publisher may offer, at any time before trial, to make a correction or clarification. The offer must:

- be in writing;
- contain the publisher's offer to publish a sufficient correction or clarification;
- pay the person's reasonable expenses of litigation;
- be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a re-publisher.

The act must be known and cited as the Uniform Correction or Clarification of Defamation Act.

Votes on Final Passage:

Senate	49	0	
House	53	42	(House amended)
House	70	26	(House receded/amended)
Senate	43	4	(Senate concurred)

Effective: July 28, 2013.